

GENERAL ORDER

Rev.06/18/97

Eff. 07/15/97

~~The purpose of this order is to describe the procedures for obtaining non-telephonic search warrants by members.~~

I. Search Warrants**5.16.01 PURPOSE**

~~This order establishes policies and procedures for the preparation, review, service, and return of search warrants. The purpose of the policy is to ensure all search warrants comply with the Fourth Amendment and statutory requirements, safeguard peace officer and public safety, and promote public trust.~~

5.16.02 POLICY

~~A. A.—Under the Fourth Amendment of the United States Constitution, the only legal means of obtaining evidence, excluding specific exceptions, is by search warrant. Search warrants are the most reliable means of preserving and the admissibility in court of evidence seized during a criminal investigation. The San Francisco Police Department requires its members to conform themselves to the law in all aspects of their duties and particularly in obtaining evidence by means of California Constitution, individuals are granted protections against unreasonable searches and seizures. The Fourth Amendment states, “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”~~

~~B. — Absent a clear exception~~

~~Members shall comply with all constitutional and statutory requirements when obtaining, executing, and returning search warrants.~~

~~B. The term “members,” used throughout this Department General Order, refers to sworn members of the Department.~~

~~C. Absent specific exceptions to the requirement for a warrant, searches shall be conducted under the authority of a duly issued search warrant. Where doubt is present about whether an exception to the requirement of a warrant exists, members should secure the person, place, or thing to be searched and seek a search warrant. Probable cause is required to obtain a search warrant.~~

5.16.03 II. PROCEDURES FOR OBTAINING SEARCH WARRANTS
PREPARATION AND REVIEW

A. Members seeking search warrants may, and are encouraged to, draft their own search warrant affidavits. If the member does not have any training in search warrant preparation, a Lieutenant shall designate a member with experience and application training in drafting search warrants to assist the member with drafting search warrant affidavits.

A. B. Members shall act in good faith and be truthful when writing affidavits and shall sign the affidavit under oath and penalty of perjury. A member acts in good faith when that member exercises reasonable diligence in ensuring the affidavit is accurate and contains no material omissions or misstatements. Truthfulness is evaluated based on what the affiant knew at the time the affidavit is signed. A good faith mistake in preparing the affidavit is not untruthfulness.

B. When writing affidavits, members shall include a statement of probable cause describing the offense, a detailed description of the person, place, or thing to be searched, the specific items sought to be seized, request and justification for special procedures, and any other legal requirements.

C. Members shall include known exculpatory information and information members would reasonably believe could affect the probable cause determination by a magistrate. (See DGO 2.01 Rules of Conduct)

The following are some examples of information that could affect the probable cause of a search warrant:

- Information, including bias, impacting the credibility of a witness, victim, or informant.
- Information that an informant received any benefit, consideration, or compensation.
- Witness or victim statements that are contrary to information in the affidavit.
- Existence of physical evidence or scientific testing that contradicts witness identifications or descriptions of events.
- Witness identifications or lack of identifications of a suspect, vehicle, or property.
- Evidence pointing to a perpetrator other than a suspect identified by the Affiant.
- Information affecting the Affiant's credibility such as inclusion on a *Brady* list.
- Information concerning when the Affiant received information or when events occurred.

D. All applications for search warrants authored by an Officer require the approval of a supervising Sergeant.

A.E. All applications for premises search warrants shall be reviewed and approved by a the member's direct supervisor, and the appropriate Investigations Bureau Lieutenant or Patrol Lieutenant. Supervisors must thoroughly review and assess the search warrant, affidavit, and supporting documents for appropriateness, legality, and conformance with San Francisco Police Department (SFPD) policy. The purpose of supervisory review is to:

C. Search warrant applications initiated by members of the Bureau of Inspectors shall be done in accord with Bureau policy and through the appropriate prosecution section of the Office of the District Attorney.

D. After supervisory review, all search warrant applications made by members outside the Bureau of Inspectors shall be submitted to:

1. The Officer in Charge of the appropriate investigative section during normal business

~~—hours; or,~~

~~2. The Officer in Charge of Night Investigations outside business hours; or,~~

~~1:2~~

GENERAL ORDER

Rev. 2/15/23

DGO 5.16

Rev. 06/18/97

Eff. 07/15/97

~~3. The assigned Inspector, if the search is in furtherance of a case previously assigned to a member of the Bureau of Inspectors, or if that Inspector is unavailable, the on-call members of the investigative section or the Officer in charge of that section if there is no on-call crew.~~

~~E. After review and approval by the appropriate Investigative Section member, the search warrant application shall be submitted to the Office of the District Attorney through:~~

~~1. The prosecution section appropriate to the crime under investigation during business hours; or,~~

~~2. The on-call Deputy District Attorney for search warrants during all other times by contacting that person through the Operations Center.~~

~~F. Fax transmittal of search warrant applications to each level of review, including review and issuance by a judge, is the preferred method.~~

~~G. Upon obtaining a search warrant, the affiant officer shall be personally responsible for:~~

~~1. Registration of the search warrant with the clerk of the court on the next court business day after service, but never more than ten days (excluding weekends and holidays) after issuance of the search warrant. Only unusual circumstances would justify delay in registration;~~

~~2. Delivery of certified copies of the affidavit and application to the assigned Inspector and the appropriate section of the District Attorney's Office by the next business day;~~

~~3. Delivery of the return and inventory of the warrant to the issuing magistrate on the next court business day after service and to the assigned Inspector and DA prosecution section on the next business day after service.~~

- H. Ensure probable cause has been established and supported by specific facts.
- Ensure appropriate procedures were utilized to verify the target location.
- Ensure information is consistent and detailed including a description of the person, place or thing to be searched, and the specific items sought to be seized.

1. If the Lieutenant is unavailable to meet in person to review and approve the warrant and/or there are exigent circumstances and/or instances where a delay would cause the evidence to be destroyed or lost, the Lieutenant may review the facts of the warrant by phone or video conference and give verbal approval.
2. The name of the approving Lieutenant shall be documented in the search warrant service incident report or the Chronological of Investigation.

F. After the Lieutenant has reviewed and approved the premises search warrant and prior to service, the Lieutenant shall:

1. Ensure the appropriate entities have been contacted for de-confliction (Western States Information Network (WSIN)) and if the search warrant is out of county, notify the local police agency. (See DGO 5.14 Interagency Operations)
2. Review and sign search warrant threat matrix and operations order, if applicable. (See SFPD 533 Warrant Service Matrix)
3. Notify the Lieutenant of any associated Investigative Unit regarding the investigation. (e.g., District Plainclothes Unit seeking a robbery related search warrant, notify Robbery)

G. Submission to the District Attorney's Office or prosecuting agency:

1. Members shall present and consult with the San Francisco District Attorney's Office or the prosecuting agency on all premises search warrants prior to judicial review. A Lieutenant may authorize direct submission to a magistrate if there are exigent circumstances, instances where a delay would cause the evidence to be destroyed or lost, the District Attorney's Office or prosecuting agency has not responded within a reasonable amount of time, or presentation and consultation is not feasible given the nature of the sealed portion of the affidavit. The name of the Lieutenant who authorized direct submission and reason for the exigency shall be documented in the Chronological of Investigation and an incident report, if applicable.
2. Members are encouraged to present and consult with the San Francisco District Attorney's Office or the prosecuting agency on all other search warrants prior to judicial review.
3. Search warrants may be presented to the District Attorney's Office through an on-call procedure as specified by the District Attorney or directly to a specific attorney or unit.
4. Members shall document, in the search warrant affidavit, incident report, or the Chronological of Investigation, if the District Attorney's Office or prosecuting agency has been consulted or if the member was ordered by another member to seek a search warrant.

5.16.04 SPECIAL PROCEDURES

A. **No-Knock** - A no-knock warrant is a warrant signed by a magistrate, at the request of a peace officer, that authorizes officers to enter a premises without complying with knock notice requirements. SFPD shall not seek no-knock warrants solely to prevent the destruction of evidence. Members may request a no-knock provision if specific facts contained within the affidavit provide that the member has reasonable grounds to believe that, at the time the

warrant is sought, knocking and announcing would create an imminent threat of physical violence to the members executing the warrant and/or the public.

The Tactical Unit shall be consulted regarding requests for a no-knock provision and information from the Tactical Unit shall be incorporated in the affidavit, if the Tactical Unit is requesting a no-knock provision. Authorization for no-knock must appear on the face of the warrant. Additionally, an Assistant Chief's approval is required prior to the service of an authorized no-knock warrant.

All no-knock warrants shall be served by a Tactical Unit. If the circumstances for the request of a no-knock warrant are no longer present at the time of service, members shall comply with knock notice.

B. Night Service - A search warrant shall be served between the hours of 7 a.m. and 10 p.m. unless the magistrate who signed the warrant determines there is "good cause" that the warrant may be served at any time of day or night. In determining "good cause," the magistrate is required to consider the safety of peace officers serving the warrant and the safety of the public. Members shall document reasons for a night service request in the affidavit of the warrant and authorization for night service must appear on the face of the warrant.

C. Sealed Portions - Members may seek to seal part or all of a search warrant, by invoking Evidence Code sections 1040-1042, to protect the identity of a confidential informant or other confidential/official information. Members shall provide the reviewing magistrate with a separate Request and Order to seal either a portion or the entire warrant. Members shall follow the magistrate's directions regarding retention of the sealed portion. If members are unfamiliar with the process, members should contact SFPD Legal. If appropriate, a Lieutenant may authorize direct submission of a request to seal a portion or all of a premises warrant directly to a magistrate. (See 5.16.03 G.1.)

When a magistrate grants an order to seal a portion of or the entire search warrant, members shall not release sealed portions unless pursuant to a court order.

5.16.05 PROCEDURES FOR SERVING AND RETURNING THE WARRANT

A. A search warrant shall be executed and returned within 10 days of issuance.

After 10 days, unless executed, the warrant is void. The date of issuance is calculated as day zero.

B. Consistent with SFPD policy, members shall wear and activate Body Worn Cameras (BWC) while executing search warrant for premises, vehicles, or where members are interacting with the public.

C. Knock notice is required prior to securing a premise for a warrant unless a no-knock warrant has been obtained. Knock notice requires that members knock or take action that is

reasonably likely to alert the occupants of their presence, announce their identity and purpose, demand entry, and wait a reasonable amount of time before entry is made.

If a member did not anticipate the need for a no-knock warrant and if, upon arrival, exigent circumstances arise such that knocking and announcing would create an imminent threat of physical violence to the members and/or the public, members may conduct a no-knock entry. Members shall still make reasonable efforts to announce their identity and purpose. Members shall document such necessity in an incident report.

When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, members shall when feasible, use de-escalation tactics. (See DGO 5.01 Use of Force)

D. Members should exercise reasonable care in executing a search warrant to minimize damage to property.

E. When planning a search warrant, members shall consider the ages and likely location of youth (person 17 years of age or younger) when determining the time, place, and logistics of executing the search warrant. (See DGO 7.04 Children of Arrested Parents)

F. When feasible, members should refrain from executing a search warrant when only youth are present at the target premises. If only youth are present, members should secure the premises, comply with DGO 7.01 Juvenile Policies and Procedures, and wait until a responsible adult arrives on scene. If members are unable to locate a responsible adult who can respond to the target premises, or locating a responsible adult is not feasible given the nature of the investigation, members can proceed with the search. In those limited situations, members shall document in the search warrant service incident report the efforts made to locate a responsible adult or the reasons why locating one was not feasible given the nature of the investigation.

This requirement does not apply if the only youth present is the subject to an arrest warrant, in which case members shall comply with DGO 7.01.

G. Upon serving a search warrant, the Affiant or a designee determined by the Lieutenant, shall be personally responsible for providing a copy of a premises search warrant, excluding the affidavit, to: (1) a person present at the premises where the search warrant is executed; or (2) the target of the investigation; or (3) in the absence of any person, it shall be left at the premises that was searched. If providing the search warrant would compromise other warrants or investigations, the search warrant should be first redacted.

H. Members shall observe statutory and administrative requirements regarding the Return to the Search Warrant, issuance of property receipts and inventory of seized property. (See DGO 6.15 Property Processing)

When property is taken under a warrant, the member shall issue a detailed property receipt (SFPD 315) to: (1) the person from whom the property was taken; or (2) the person in whose possession the property was found; or (3) in the absence of any person, the receipt shall be left in the place where the property was found.

The requirement to leave a property receipt may be satisfied by issuing a copy of the search warrant return detailing all items. Members who issue a search warrant return in lieu of a property receipt form (SFPD 315) shall state so in their search warrant incident report or Chronological of Investigation.

Members shall retain a duplicate copy of the property receipt or Return to the Search Warrant, either in the case file or attached to an incident report.

1. The affiant ~~officer~~/designee is personally responsible for the proper booking of all seized evidence into the Property—_Control Section, or deposit of narcotics at the Narcotics drop, of all evidence seized under the Drop, authority of a search warrant.

III. OUTSIDE AGENCY ASSISTANCE

2. The search warrant, including the Return to the Search Warrant, shall be submitted to the court and filed with the clerk of the court within 10 days of the issuance of the warrant. The date of issuance is calculated as day zero. If the tenth day falls on a weekend or holiday, the warrant shall be submitted on the next scheduled court day.

When evidence is held by a third party and not all information has been obtained or records have not been received, (e.g., cell phone data, bank records, electronic data, computer download) members should submit and file the search warrant and Return to Search Warrant indicating the warrant has been served but the records have not yet been received within 10 days of the issuance of the warrant. Once the records are received, members shall file an amended Return to the Search Warrant.

Depending on the type of search warrant or the specific nature of the evidence, specific requirements or exceptions related to the return and filing of a search warrant may exist and members shall follow those specific procedures (e.g., financial records, tracking warrants etc.).

- I. Members should deliver a certified copy of the affidavit and application to the assigned Investigator and the appropriate section of the District Attorney's Office when the investigation is submitted for prosecution (unless the affidavit is under seal).
- J. Evidence is seized and held on behalf of the court that issued the warrant. A court order is required prior to the transfer, destruction, or release of seized evidence to any person or agency.

5.16.06 SPECIAL SEARCH WARRANTS

A. Special Masters - California law requires courts to appoint special masters (independent attorneys) for search warrants seeking “documentary evidence” in the possession or control of lawyers (defined in Evidence Code section 950), physicians (defined in Evidence Code section 990), psychotherapists (defined in Evidence Code section 1010), and clergy (defined in Evidence Code section 1030), provided they are not reasonably suspected of criminal activity related to the documentary evidence sought. “Documentary evidence” includes but is not limited to: writings, documents, blueprints, drawings, photographs, electronic files, computer software, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description. “Documentary evidence” can contain privileged information that is protected by law. Members can obtain a warrant for this evidence if a specific special master protocol is followed.

Members shall clearly identify that the evidence sought is in the possession of a lawyer, physician, psychotherapist, or clergy member and ask the magistrate to appoint a special master. Special masters shall accompany members serving the warrant. Members shall present and consult with the San Francisco District Attorney’s Office or the prosecuting agency on all warrants requiring a special master prior to judicial review. Additionally, a Commander or Deputy Chief’s approval is required.

B. Medical Record Disclosures - Records relating to the identity, diagnosis, prognosis, or treatment of a past or present patient maintained by a health care facility (defined in Penal Code section 1545(a)) which do not require a special master or are required by law to be confidential can be disclosed pursuant to a search warrant or by an appropriate order of a court after a showing of “good cause.” Penal Code section 1543 outlines the requirements for these records.

Records maintained by alcohol or other drug abuse programs must be obtained pursuant to special requirements under Health and Safety Code section 11845.5 and/or 42 USC 290dd-2 and 42 CFR 2.65. Members shall present and consult with the San Francisco District Attorney’s Office or the prosecuting agency on all warrants seeking records maintained by an alcohol or other drug abuse program prior to judicial review.

C. Journalists and California’s Shield Law - The Reporters’ Shield Law (Evidence Code section 1070, Penal Code section 1524(g)) provides protections broadly to journalists, reporters, employees, independent contractors, stringers, interns, or any other individual associated with the press and their sources and some information in their possession. Individuals who work for or are associated with the press (e.g., newspaper, television, radio, online media outlets, including blogs, or periodical publications) are protected.

The Reporters’ Shield Law forbids the issuance of search warrants seeking (1) unpublished information obtained or prepared in gathering, receiving, or processing of information for

communication to the public and/or (2) the identity or information that might lead to the identity of a source of any information procured for publication in a newspaper, magazine, or other periodical publication or radio or television news program.

For any search warrants sought for an individual, or that individual's vehicle(s), property, residence(s), office(s) covered by the Reporters' Shield Law that may contain the aforementioned information, members shall consult with the San Francisco District Attorney's Office or the prosecuting agency, and the City Attorney's Office prior to judicial review. Additionally, approval from an Assistant Chief or Chief of Police is required.

Where there is probable cause to believe an individual associated with the press committed a crime not involving possession of materials for journalistic purposes or the identity of a source of information, members shall consult with the San Francisco District Attorney's Office or the prosecuting agency. Additionally, approval from an Assistant Chief or Chief of Police is required.

Members shall ensure all warrant applications fully disclose any information that could indicate an individual falls within the Reporters' Shield Law protections.

D. Ramey Warrants - Members may seek a pre-complaint arrest warrant, commonly known as a Ramey warrant. Penal Code sections 817 and 840 define this warrant of probable cause to arrest. Ramey warrants shall be reviewed by a member's direct supervisor and by the appropriate Investigative Unit Lieutenant before judicial review.

E. Tracking Device Search Warrants - Members may seek a search warrant authorizing the installation and monitoring of a vehicle tracking device in circumstances described in Penal Code section 1524(a)(12). Members shall comply with the specific warrant requirements for tracking devices as set forth in Penal Code section 1534(b). A tracking warrant shall identify the person or property to be tracked and shall specify a reasonable length of time, not to exceed 30 days. A court may, upon a showing of good cause, extend the length of time.

No later than 10 calendar days after the use of the tracking device has ended, the member that executed the warrant shall notify the person who was tracked or whose property was tracked pursuant to Penal Code section 1546.2(a). Notice may be delayed pursuant to Penal Code section 1546.2(b).

F. Non-Consensual Blood Draw / Telephonic Warrants - Under the Fourth Amendment, a blood sample may be taken from a suspect if there is probable cause to believe the suspect committed a crime and a chemical analysis of the sample would yield evanescent evidence of the crime. Absent exigent circumstances, members shall obtain a search warrant. When seeking a search warrant in a DUI case, members are encouraged to use the DUI Search Warrant form. Members shall follow the specific telephonic search warrant procedure outlined in current Department policy.

A.G. Outside Agency Assistance - Members contacted by outside law enforcement agencies to assist in the preparation and service of a search warrant ~~for service~~ in San Francisco shall comply with the provisions of this order. (See DO 5.14 Interagency Operations)

2:2

H. Out-of-County Warrants - A magistrate in California may issue a search warrant for any county in California if the affidavit establishes probable cause to believe that the evidence sought pertains to a crime committed in the county in which the magistrate sits. In identity theft cases, the warrant may also be issued by a magistrate in the county in which the victim lives.

The warrant must be directed to and executed by peace officers employed in the county in which the magistrate sits. It is considered standard practice to notify WSIN and the local law enforcement agency that a warrant will be executed in their jurisdiction and to have at least one local officer present when the warrant is executed. Local officers may assist in the search, if necessary. (See DO 5.14 Interagency Operations)

I. Media Presence - Media representatives may not enter any premises to observe or accompany a law enforcement action or operation (e.g., execution of search warrants, arrest warrants, crime scene investigations, etc.) if there exists an expectation of privacy in the premises or the premises is not open to the general public. (See DO 8.09 Media Relations)

J. Mandatory Compliance with Electronic Communication Privacy Act - The provisions and requirements of the California “Electronic Communication Privacy Act” or CalECPA (Penal Code sections 1546, 1546.1, 1546.2, and 1546.4) govern access to and retrieval of electronic information from service providers or electronic devices. Electronic devices include, but are not limited to: computers, cellular telephones, hard drives, floppy disks, thumb drives, memory cards, MP3 players, digital video recorders (DVR), smart watches or any items capable of storing digital data. An electronic device does not include the magnetic strip on a driver’s license or identification card issued by California or another state. **Failure to comply with the Electronic Communications Privacy Act may result suppression of evidence and/or civil liability.**

Absent a specific exception outlined in Penal Code section 1546.1, members shall obtain a search warrant, wiretap order, or an order for a pen register and/or trap and trace device to compel the production of or access to electronic communication information from a service provider, or to compel the production of or access to electronic device information from any person or entity other than the authorized possessor of the device. Members shall obtain a warrant, wiretap order, an order for a pen register and/or trap and trace device, or specific consent from the authorized possessor of the device to access electronic device information by means of physical interaction or electronic communication with an electronic device.

Members shall comply with the specific CalECPA warrant requirements including but not limited to: particularity of information to be seized, time periods covered, targeted individuals or accounts, sealing of unrelated information obtained through the execution of

the warrant, voluntary disclosure of information from a service provider, obtaining information pursuant to an emergency, and notification to the target of the warrant.

Searches of electronic devices and media may involve the review of material that is within the scope of search warrant commingled with information that is private and not within the parameters of the warrant. When feasible, members should use an independent third party, specially trained Department personnel, or members not associated with the investigation for the separation of material outside the scope of the search warrant. Members shall make reasonable efforts to minimize the examination of files outside the scope of the search warrant.

Any member, unfamiliar with CalECPA, seeking a warrant for electronic information from a service provider or access to a digital device should contact SFPD Legal Counsel, San Francisco District Attorney's Office, or the prosecuting agency for assistance.

K. Geofence Warrants - Members seeking geofence warrants, also known as reverse location warrants, shall comply with the provisions and requirements of CalECPA. Geofence warrants should be used only after it is clear that traditional search warrants cannot be obtained or would be ineffective. Geofence warrants shall set forth probable cause and particularity for the search and be narrowly tailored in scope (location, geography, and time). Members shall utilize the multi-warrant process and request anonymized data first. Members shall articulate specific facts to justify de-anonymizing any data in follow-up warrants.

Members who do not have specific training in the legal requirements and multi-warrant process for obtaining geofence warrants shall consult with the Special Investigations Division (SID) prior to the submission of a geofence warrant to a magistrate.

Members shall present and consult with the San Francisco District Attorney's Office or the prosecuting agency on all geofence warrants prior to judicial review.

L. Wiretap Warrants - Penal Code section 1546.1(c) allows access to electronic device information pursuant to a wiretap order issued pursuant to Chapter 1.4 (commencing with Section 629.50) of Title 15 of Part 1. An application for an order authorizing the interception of a wire or electronic communication shall be made by the Attorney General or the District Attorney. Members seeking a wiretap warrant shall consult with the prosecuting agency.

Search and seizure law is constantly evolving with the advancement of technology, the passage of new laws, and the issuance of state and federal court rulings. Members are responsible for legal updates and when there is a discrepancy with this Department General Order, members shall adhere to the most current California and federal law. (See DGO 2.01 Rules of Conduct)

References

Fourth Amendment of the United States Constitution

California Constitution Article I - Declaration of Rights Section 13

Evidence Code sections 950,990,1010,1030, 1040-1042 & 1070

Penal Code sections 817, 840,1534,1543,1545(a),1546, 1546.1, 1546.2, and 1546.4

Health and Safety Code section 11845.5

42 USC 290dd-2

42 CFR 2.65

DGO 2.01 Rules of Conduct

DGO 5.01 Use of Force and Proper Control of a Person

DGO 5.14 Interagency Operations

DGO 6.15 Property Processing

DGO 7.01 Policies and Procedures for Youth Non-Psychological Detention, Arrest, and Custody

DGO 7.04 Children of Arrested Parents

DGO 8.09 Media Relations

DGO 10.11 Body Worn Cameras

SFPD 315 Property Receipt Form

SFPD 533 Warrant Service Matrix